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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,136	09/30/2003	Henrik Ovesen	900.43156X00	3836

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

EXAMINER	
PARSLEY, DAVID J	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/673,136	Applicant(s) OVESEN ET AL.	
	Examiner David J. Parsley	Art Unit 3643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *8-40*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

PETER M. POON
SUPERVISORY PATENT EXAMINER
9/2/05

Continuation of 11. does NOT place the application in condition for allowance because: applicant argues that the Tyrell et al. reference US 5487699 does not disclose an influence of the gas is adjused while the animals are within the stunnig gas by shortening or lengthening a conveying time and adjusting a conveying route within the stunning gas. However, as seen in figure 1 of Tyrell et al. the animals are conveyed through the stunning chamber - at 10, via three different conveyor devices - at 23-24, 28 and 31-32. Each of these conveyors moves in different directions in that the conveyor - at 23-24 moves vertically downward into the chamber - at 10, the converyor - at 28 moves horizontally from one side of the chamber - at 10 to the other and the conveyor - at 31-32, moves vertically upward through the chamber - 10. Therefore, the conveying route of the animals is adjusted as the animals move from one of these conveyors to the others inside the chamber - at 10 as seen in figure 1. Further, the Tyrell et al. reference discloses shortening or lengthening a conveyring time when the animals are in the stunning chamber - at 10 as seen in column 3 lines 61-67, the conveyor - at 23-24, has an intermittent drive which allows for the animals to be moved at differing rates through the chamber - at 10 when being conveyed on the conveyor - at 23-24. Further, the conveyor - at 31-32, operates in a similar manner as that of the conveyor - at 23-24 as seen in column 4 lines 1-12 and therefore the conveying time of the animals in the chamber - at 10 can be adjusted as the animals are on the conveyor - at 31-32. Further, the conveyor - at 23-24, moves three crates - at 22 of animals into the chamber - at 10 as seen in figure 1, and then the crates - at 22 are removed from the chamber - at 10, via conveyor - at 31-32, one at a time. Therefore, the length of time of each of the three crates - at 22, conveyed into the chamber - at 10, varies from the other respecitve crates - at 22, in that they stay in the chamber - at 10, for differing times depending on when the crates - at 22, are removed from the chamber - at 10, via the conveyor - at 31-32. Therefore, the conveying time of the animals in the chamber - at 10 is adjustable/variable. Further, regarding claim 9 the Tyrell et al. reference indicates intermittent drive of the conveyor - at 23-24, and thus the speed of the conveyor can be increased or reduced. Further, regarding claims 10-11 the Tyrell et al. reference the Tyrell et al. reference does disclose that the three conveyors - at 23-24, at 28 and - at 31-32, are inside the gas in the chamber - at 10 as seen in figure 1, where the vertically movable conveyors - at 23-24 and 31-32 are in the gas at their lowermost points and the conveyor - at 28, is in the bottom of the chamber - at 10 and thus all three conveyors are located in the stunning gas as seen in claim 1. Further, regarding claims 12-15, the Jull et al. reference WO 94/27425 does disclose the gas concentration is varied in the stunning chamber via item - 132 which fills the chamber - at 106 with stunning gas as seen in figure 6. Further, the gas concentration is varied in the chamber - at 106, where air is located at the top of the chamber - at 106, a mixture of the stunning gas and air - at 134 is located at a portion below the upper portion of the chamber as seen in figure 6 and only stunnig gas is located at the bottom of the chamber - at 106 as seen in figure 6. Therefore, the Jull et al. reference discloses the claimed subject matter and renders the claims obvoius when combined with the Tyrell et al. reference as seen in paragraph 4 of the final rejection dated 4-26-05. Regarding claims 16-23, applicant relies upon the arguments with respect to the Tyrell et al. and Jull et al. references with respect to claims 8-15. Therefore, see the response to these arguments above. Regarding claims 24-31, the Chamberlain reference US 5788564 does not show the claimed concentrations of gas of being at 45-51% at the lower portion of the stunning chamber, 32-46% in the intermediate zone of the stunning chamber and 8-10% in the upper zone of the stunning chamber. However, applicant does not state in the disclosrue that the concentratoin of the stunning gas solves any particular problem or is done for any particular reason over the concentrations of gas in the prior art references. Therefore, the gas concentration is deemed to be determined by experimenation and therefore would have been obvious to one of ordinary skill in the art to be used in the Tyrell et al. reference as modified by the Jull et al. and Chamberlain references as seen in paragraph 4 of the final rejection dated 4-26-05. Further, regarding claims 32-40 the Tessier et al. reference US 5902177 does disclose the use of a PLC to control the movement of a conveyor - see the abstract. The Tyrell et al. reference discloses a controller which is inherent, that controls the conveyors - at 23-24, 28 and 31-32 as seen in figure 1. The Tyrell et al. reference further discloses the claimed structural elements of the conveyor as seen in reference to claims 8-15 above and therefore the Tyrell et al. reference in combination with the Tessier et al. reference renders the claims obvious as seen in paragraph 4 of the final rejection dated 4-26-05.